

ORDINANCE NO. 38

AN ORDINANCE ADOPTING A PROGRAM OF DRAINAGE MANAGEMENT FOR THE JOHNOSN CREEK DRAINAGE BASIN; PROVIDING FOR ADMINISTRATION, PLANNING, MAINTENANCE AND ACQUISITION OF TEMPORARY EASEMENTS; PROVIDING FOR FINANCING THROUGH SERVICE CHARGES; PROVIDING FOR COLLECTION OF SERVICE CHARGES AND PRESCRIBING A TERMINATION DATE.

PUBLIC HEARINGS:

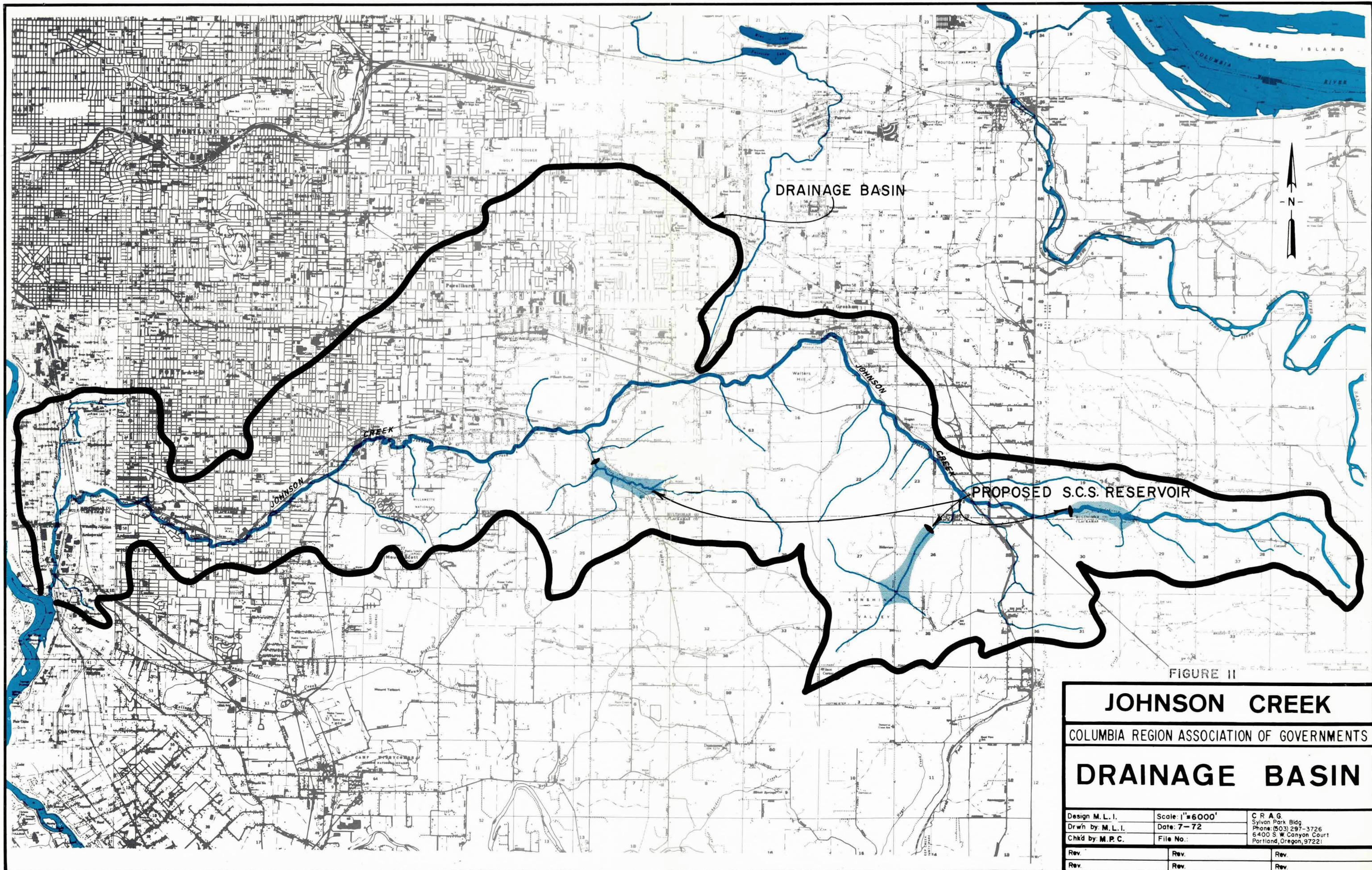
APRIL 14, 1976

APRIL 28, 1976

MAY 28, 1976

DATE OF ADOPTION: JULY 23, 1976

AMENDMENTS:



DRAINAGE BASIN

PROPOSED S.C.S. RESERVOIR

FIGURE 11

<b>JOHNSON CREEK</b>		
COLUMBIA REGION ASSOCIATION OF GOVERNMENTS		
<b>DRAINAGE BASIN</b>		
Design M. L. I.	Scale: 1" = 6000'	C R A G Sylvan Park Bldg Phone: (503) 297-3726 6400 S. W. Canyon Court Portland, Oregon, 97221
Drwn by M. L. I.	Date: 7-72	
Chkd by M. P. C.	File No.:	
Rev.	Rev.	Rev.
Rev.	Rev.	Rev.

METROPOLITAN SERVICE DISTRICT

ORDINANCE NO. 38

An Ordinance adopting a program of drainage management for the Johnson Creek Drainage Basin; providing for administration, planning, maintenance and acquisition of temporary easements; providing for financing through service charges; providing for collection of service charges and prescribing a termination date.

APPROVED METROPOLITAN  
SERVICE DISTRICT  
BOARD OF DIRECTORS

ACTION NO. 76-619

DATE 7-23-76

BY *James M. Wood*  
CLERK OF THE BOARD

ORDINANCE NO. 38

The Metropolitan Service District hereby ordains:

Section 1. Short Title.

This Ordinance shall be known as the Johnson Creek Drainage Management Ordinance and may be so cited and pleaded and shall be cited herein as "this ordinance".

Section 2. Codification.

This ordinance may be codified in the Code of the MSD.

Section 3. Findings.

The Board finds that:

A. The Metropolitan Service District is authorized under ORS 268.030 to provide metropolitan aspects of surface water control.

B. Johnson Creek flooding and related problems have been plaguing Southeast Portland and portions of Multnomah and Clackamas County for at least forty years.

C. Annual flood costs to existing improvements average \$476,000.

D. Local jurisdictions have been unable to coordinate a workable solution to the Johnson Creek problems.

E. The channel improvements recommended in the April, 1975 Design Memorandum - Johnson Creek at Portland by the Corps of Engineers could result in negative environmental impacts without a detailed evaluation of possible alternatives.

F. The Corps of Engineers is currently authorized by a resolution of the Committee on Public Works of the United States Senate to undertake the Portland-Vancouver Metropolitan Area Water

Resources Study.

G. The Corps' Water Resources Study provides the means to develop a comprehensive drainage management plan for the Johnson Creek Basin.

I. Creek maintenance (cleaning and grubbing) will be necessary regardless of the alternative drainage management plan selected.

J. Maintenance easements are required prior to any maintenance program.

K. Public participation in developing the comprehensive plan is desirable.

L. Every property within the Johnson Creek Drainage Basin contributes some runoff to the flow in the Creek.

M. Funding of drainage management programs should be the burden of all property owners contributing to the problem.

Section 4. Purpose.

A. The purpose of this ordinance is to:

(1) Protect the health, safety and welfare of the people in the District, and especially those who reside in the Johnson Creek Drainage Basin;

(2) Reduce damage and inconvenience caused by flooding and drainage problems within the basin;

(3) Provide an optimum solution to the drainage problems throughout the basin;

(4) Protect the natural qualities of the stream system while providing adequate drainage.

(5) Develop a long-range drainage management plan in cooperation with the Corps of Army Engineers and local jurisdictions and citizens within the basin.

B. This ordinance shall be liberally construed for the accomplishment of these purposes.

Section 5. Definitions.

As used in this ordinance, unless the context requires otherwise:

- A. Basin. Basin means the Johnson Creek Drainage Basin as located on the map attached as Exhibit A to this ordinance.
- B. Board. Board means the Board of Directors of the Metropolitan Service District.
- C. District. District means the Metropolitan Service District.
- D. Impervious Surface. Impervious surface means any man-made surface which water will not penetrate, including without limitation, concrete, asphalt, roofing material and bricks.
- E. MSD. MSD means the Metropolitan Service District.
- F. Manager. Manager means the chief administrative officer of the MSD.
- G. Person. Person means any individual, corporation, industry, partnership, association, firm, trust or estate.
- H. Program. Program means the Johnson Creek Drainage Management Program.
- I. Rural Area. Rural area means that area in the Basin designated rural on Exhibit A.
- J. Service Charge. Service charge means a charge for services rendered by the District in administering, implementing and operating this ordinance.

K. Urban Area. Urban area means that area in the Basin designated urban on Exhibit A.

L. Vacant Land. Vacant land means land that has less than one percent impervious surface coverage.

Section 6. Rules and Regulations.

The Board may promulgate rules and regulations for the administration and implementation of this ordinance.

Section 7. Administration.

The Manager shall be responsible for the administration, implementation and operation of this ordinance and any rules and regulations promulgated hereunder. In order to implement this ordinance, the Manager shall have the authority to:

- A. Make contracts on behalf of the District.
- B. Negotiate and execute easements on behalf of the District.
- C. Obtain necessary permits for removal of gravel and sand.

Section 8.

The Board authorizes and approves a 3-year Johnson Creek Drainage Management Program beginning July 1, 1976 which will include:

- A. Securing access to Johnson Creek for maintenance purposes only.
- B. Maintaining Johnson Creek by clearing debris, fallen trees and overgrown brush and removing sand and gravel deposits impeding the flow of water.
- C. Reducing bank erosion.
- D. Developing a long-range drainage management plan

with the Corps of Army Engineers and local jurisdictions and citizens within the Basin.

E. Developing a program of citizen involvement in planning, maintenance and Program implementation.

F. Developing a site control ordinance.

Section 9. Service Charges.

A. The administration, implementation and operation of the Program and this ordinance shall be paid for by service charges. The Board shall set the service charges annually by ordinance. Service charges will be levied against the property within the basin in accordance with the amount of impervious surface on urban land and on gross area of land for vacant and rural land.

B. Service charges will be levied annually for two years, for fiscal year July 1, 1977 - June 30, 1978 and fiscal year July 1, 1978 - June 30, 1979.

C Service charges shall not exceed:

<u>Max. Rate per Unit</u>	<u>Unit</u>	<u>Applicable Land uses</u>	<u>Max. Total Annual fee</u>
\$1.00	Acre	Vacant	\$5.00
\$1.00	5 acres	Rural	\$50.00
\$.005	sq. ft. of imper- vious surface	Urban-single family residential	\$20.00
\$.005	Sq. ft. of imper- vious surface	Urban-all others (commercial, indust., multi-family, etc.)	\$400.00

Section 10. Easements/Condemnation.

A. The easements to be used in the program shall be in a form similar to the form of easement attached as Exhibit B. Variations may be made from this form if approved by the Manager and the property owner.



B. The power of condemnation shall not be used by the District to secure easements necessary to implement this ordinance, except as provided in subsection 10(C).

C. A property owner may perform those maintenance and cleaning functions contemplated by this ordinance and approved by the Manager for those portions of Johnson Creek in which the owner has an interest. If a property owner refuses to maintain and clean the owner's portion of Johnson Creek, and if the owner refuses MSD permission by easement or otherwise to gain access to the owner's portion of Johnson Creek and to perform the maintenance and cleaning duties deemed necessary by the Manager, then MSD may use its condemnation power in accordance with law.

Section 11. Collection of Service Charges.

A. Service charges will be determined and billed to property owners prior to the beginning of each fiscal year and shall be due and payable within 30 days from the date of billing. All service charges shall be payable to the Metropolitan Service District and all money received by the MSD under this ordinance shall be deposited in the Johnson Creek Drainage Management Account and shall be used only for the administration, operation and implementation of the Program, this ordinance and any rules and regulations promulgated hereunder.

B. Any property owner who considers the service charges applicable to his/her property to be inequitable may apply to the Manager for adjustment thereof. Such application shall be made in writing within 20 days after billing and shall specify why the charge is inequitable. The Manager may affirm, deny or modify the service charges previously made against the specific property. If

dissatisfied with the Manager's decision, the property owner may request the Board to review his/her application and the Manager's decision. Such request shall be in writing and made within 20 days after the Manager's decision. The Board shall notify the property owner of the time and place the Board will consider the request for review, and the property owner shall have the right to be heard on the request.

Section 12. Johnson Creek Citizens Advisory Committee.

The Board approves and creates, during the term of this Ordinance, a Johnson Creek Citizen Advisory Committee. The Committee will advise the Board and the Manager on all matters related to the operation and implementation of the Johnson Creek Drainage Management Program. The Board will appoint the Committee members from jurisdictions within the Basin:

Clackamas County - 3 members	Multnomah County - 4 members
Happy Valley - 1 member	Portland - 5 members
Milwaukie - 2 members	Gresham - 3 members

The Committee may select such officers and adopt such rules and meeting schedules as deemed appropriate and necessary by the Committee members. The Committee will comply with the Oregon Public Meeting Law. Staff assistance will be provided by the District. Nominations for Committee membership may be made at any time by any person to the Board.

Section 13. Savings Clause.

In the event any provision or section of this ordinance is declared invalid, such declaration shall not affect the validity of any other provision or section herein, which sections and provisions shall remain in full force and effect.

Section 14. Termination.

This ordinance and the Program shall terminate effective June 30, 1979. Any surplus service charges remaining at the termination of the Program will at the Board's discretion, be returned to the property owners in an amount proportionate to the amount originally paid by each property owner, or to the local jurisdictions in an amount proportionate to their respective population in the Basin for services or work being, or to be performed, by such local jurisdictions directly related to Johnson Creek drainage problems.



Miller Duris, Vice Chairman

EXHIBIT B  
TEMPORARY EASEMENT

Recitals:

1. (Owners) are all the persons having an ownership interest in the real property located at \_\_\_\_\_ (street address) \_\_\_\_\_ (City), Oregon and more particularly described as:

LEGAL DESCRIPTION

2. Johnson Creek flows through or abuts the above-described property.

3. The Metropolitan Service District (MSD) is a municipal corporation authorized to control the flow of and provide drainage for surface waters under Oregon Revised Statutes 268.310(3).

4. MSD has started a 3-year Johnson Creek Drainage Management Program (Program) which includes cleaning Johnson Creek of debris, fallen trees, overgrown brush and sand and gravel deposits impeding the flow of water.

5. The owners have agreed to grant to MSD a three-year easement for the purposes described below.

Agreement

6. The owners grant to MSD an easement over and upon the real property described above for the purposes in paragraph 7, the location of the easement being shown on Exhibit A attached hereto and made a part hereof.

7. The easement is to be used only by MSD or its contractor for:

a. cleaning Johnson Creek of debris, fallen trees and sand and gravel deposits impeding the flow of water.

b. Gaining access to Johnson Creek.

c. Removing those standing trees, shrubs and bushes substantially impeding the flow of water as located on Exhibit A and only with the written consent of the Owners.

8. The consideration for this easement is the mutual covenants and promises contained herein and \$\_\_\_\_\_.

9. This easement shall terminate effective June 30, 1979.

10. This easement may not be assigned or transferred by MSD to any other person or governmental entity without the written consent of the owners.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

OWNERS

Notaries for all signators.